

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 1538 of 2002

Between:

Balusu Pitchaiah, S/o Sri Bhadraiah, aged 80 years,

Pedavegi, West Godavari District.

..... PETITIONER

AND

1. The Deputy Registrar of Cooperative Societies, Eluru, West Godavari District.
2. Pedavegi Primary Agricultural Co-operative Society, Pedavegi, West Godavari District, represented by its' Secretary,
3. The General Manager, West Godavari District Co-Operative Bank Limited, Eluru.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly one in the nature of Certiorari by calling for the records of A.P. Cooperative Tribunal, Vijayawada in O.A.No.144 of 1999 and quash the orders dated 13.09.2001.

Counsel for the Petitioner:MR.B.ADINARAYANA RAO

Counsel for the Respondents-1&2: GP FOR COOPERATION

Counsel for the Respondent No.3: Mr. K.Chidambaram.

The Court made the following:

ORDER:

The petitioner seeks a writ of Certiorari and to quash the order dated 13.9.2001 passed by the A.P. Cooperative Tribunal, Vijayawada in O.A.No.144 of 1999.

2. Against the surcharge order passed by the Deputy Registrar of Cooperative Societies, Eluru, under Section 60(1) of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act') in Rc.No.2664/92C dated 30.12.1998, the petitioner filed O.A.No.144 of 1999, on the file of the A.P. Cooperative Tribunal, Vijayawada. In the said surcharge order, the surcharge proceedings have been initiated in respect of three items. Admittedly, the Deputy Registrar of Cooperative Societies, Eluru, who had passed the said surcharge orders after conducting enquiry dropped the action relating to item Nos.1 and 2, in the said surcharge orders. The said surcharge order passed for recovery of Rs.43,827/- relating to item No.3. Aggrieved by the said order for recovery of Rs.43,827/- relating to item No.3 being the amount irregularly spent on vehicle towards expenditure incurred on earth filling work, the said O.A. has been filed.

3. Against the said order, the petitioner filed the appeal before the A.P.

Cooperative Tribunal, under Section 76 of the Act. Under Section 76 of the Act, in disposing of an appeal, the Tribunal being the Appellate Authority may, after giving the parties an opportunity of making their representations, pass such order thereon as that authority may deem fit. But the Tribunal remanded the matter to the lower authority for re-examination in respect of all the three items and as there was no appeal filed by the Department insofar as dropping of surcharge proceedings relating to item No.1 and 2 also, the remand is bad.

4. In these circumstances of the case, I am of the opinion that the Tribunal ought not to have reopened the settled issues of item No.1 and 2 of surcharge proceedings and ought not to have remanded the matter for consideration afresh. Accordingly, the Tribunal exceeded its jurisdiction in dealing with the items- 1 and 2, which were already dropped by the lower authority and which was not the subject matter of the appeal at all.

5. Therefore, the order of the Tribunal is set aside and the matter remanded back to the A.P. Cooperative Tribunal, Vijayawada, so as to enable it to consider and dispose of the appeal of the petitioner relating to item No.3 in the surcharge proceedings dated 13.9.2001 which is the subject matter of the appeal and pass appropriate orders within six weeks from the date of receipt of the copy of this Order, after giving reasonable opportunity to both parties.

6. Accordingly, the Writ Petition is disposed of. No order as to costs.

V. ESWARAIAH, J

18th March 2005.

BCS.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Deputy Registrar of Cooperative Societies, Eluru, West Godavari District.
2. Pedavegi Primary Agricultural Co-operative Society, Pedavegi, West Godavari District, represented by its' Secretary,
3. The General Manager, West Godavari District Co-Operative Bank Limited, Eluru.
4. Two C.Cs. to G.P. for Cooperation, A.P. High Court Buildings, Hyderabad. (OUT).
5. Two C.D.copies.